

seek to secure only those services that are genuinely necessary for the educational process. CEA Reply Comments, p. 2.

Whether a greater discount for economically disadvantaged schools is desirable for Connecticut and permissible under the Telecommunications Act.

According to the CEA, discounts indexed to the economic status of students are appropriate and necessary. CEA Reply Comments, p. 3.

Whether participation in the national school lunch program is an appropriate measure of a Connecticut's school's wealth (i.e., ensures affordable access to intrastate telecommunications services).

Noting that the economic status of students can be directly correlated with their performance on academic tests, the CEA agrees with the Joint Board's recommendation to measure a school's wealth by its percentage of students participating in the national school lunch program. CEA also notes that the use of this metric achieves the Congressional mandate that our universal service system be specific and predictable. CEA Reply Comments, pp. 3, 4.

Whether the six-step approach (<1% participation in the national school lunch program; 1-19% participation in the national school lunch program, etc.) chosen by the Joint Board provides appropriate thresholds.

CEA states that the six-step approach chosen by the Joint Board constitutes a viable and reasonable proposal for determining discount thresholds. CEA also supports JCET's request that the Department consider alternative methods for determining cost and level of need for those schools and libraries that do not participate in the free lunch program.

While CEA supports the use of the six-step approach, it also expresses concern that the Joint Board's proposed discount mechanism is the product of educated guessing, rather than experience. Therefore, CEA suggests that the Department consider a periodic assessment of the effectiveness of the matrix and potentially revise the matrix based on that assessment. CEA Reply Comments, pp. 4-6.

Whether use of the national school lunch program metric is appropriate in light of the Connecticut Supreme Court's ruling in *Sheff v. O'Neill*.

According to CEA, statistics composed in the wake of *Sheff* provide clear and compelling evidence of the concentration of racial and ethnic minority students in a handful of school districts. Comparing that information to the proposed discount matrix, CEA notes that higher concentrations of minority students exist in a number of Connecticut districts than are accounted for by the national school lunch program. CEA states that there are four school districts in Connecticut with student populations of more than 85% students of color, and five school districts with minority student populations between 50-75%. Yet only one Connecticut district with such a high

proportion of minority students would qualify for the highest level of discounts. Therefore, CEA argues that to remedy this situation in keeping with the findings of the Connecticut Supreme Court, the discount methodology would have to be modified so as to make those districts described above eligible for higher levels of discounts. CEA Reply Comments, pp. 6-8.

IV. DISCUSSION

A. INTRODUCTION

By its November 8, 1996 Recommended Decision in CC Docket No. 96-45, the Joint Board recommended that the FCC adopt a percentage discount mechanism to ensure affordable access by schools and libraries to telecommunications services. That discount schedule is adjusted for schools and libraries that are defined as economically disadvantaged and for those schools and libraries located in high cost areas.¹⁰ The Joint Board further recommended that the percentage discounts be applied through a proposed matrix that provides discounts from 20% to 90%. These discounts would apply to all telecommunications services, internet access, and internal connections, with the range of discounts correlated to the indicators of economic disadvantage and high cost for schools and libraries. The Joint Board chose a percentage discount mechanism over other alternatives because 1) asking schools and libraries to pay a percentage share of a service's cost encourages those entities to purchase only those services they can use efficiently and effectively, and 2) the use of a percentage discount mechanism encourages schools and libraries to seek the lowest pre-discount price possible through a competitive bidding process.

While the 1996 Telcom Act did not explicitly mandate a greater discount for economically disadvantaged schools, the Joint Board concluded that the FCC has the discretion under the FTA to determine whether such a discount is necessary, and concluded that numerous references to affordability in the FTA's legislative history support its conclusion. Consequently, the Joint Board recommended that percentage discounts be available to a school based on the percentage of its students participating in the national school lunch program.¹¹ Libraries would also be eligible for the discount based on their location in a school district serving economically disadvantaged students. The Joint Board also recommended the availability of higher levels of support for schools and libraries located in high cost areas.¹²

¹⁰ The collection of funds for, and the size of, the federal schools and libraries program is under the sole discretion of the FCC and is not at issue under this docket.

¹¹ Those schools or districts that do not participate in the national school lunch program may certify the percentage of students who would be eligible for the program if the school or district were to participate. JB Decision, ¶568.

¹² While the Joint Board did not recommend a specific approach for determining cost of service, it recommended generally a step approach that would calibrate the cost of service in some reasonable, practical, and minimally burdensome manner. It suggested, as an example, defining high cost areas by considering the unseparated loop costs of the incumbent LEC and comparing that loop cost to a nationwide threshold. If the incumbent LEC's unseparated loop costs in that area exceed the national threshold, the area would be considered "high cost" and schools and libraries located in that area would be given a greater discount. JB Decision, ¶560.

With the above parameters established, the Joint Board recommended that discounts be available to schools and libraries based on the following matrix:

Percentage of students participating in national school lunch program	Low cost of service	Medium cost of service	High cost of service
< 1 (3%)	20%	20%	25%
1-19	40%	45%	50%
20-34	50%	55%	60%
35-49	60%	65%	70%
50-74	80%	80%	80%
75-100	90%	90%	90%

As discussed in greater detail below, the Department has determined the appropriate level of discount that is necessary to ensure affordable access to and use of such intrastate services by elementary schools, secondary schools and libraries.

B. EDUCATIONAL RATE DISCOUNTS

In general, the participants to this proceeding accept and support the Joint Board's recommended decision relative to the type and level of discounts offered to schools and libraries to enhance their access to all telecommunications services. See for example, OCC Position Paper, pp. 4 and 5; AT&T Position Paper, p. 3; and MCI Position Paper, p. 5. The Department also accepts the Joint Board's Recommended Decision and believes that schools and libraries should be afforded the greatest flexibility in purchasing the telecommunications services they believe will effectively and efficiently meet their needs. At a minimum, intrastate discounts should be equal to those offered for interstate services and consistent with §16-247(a) of the Conn. Gen. Stat. and §254h of the 1996 Telcom Act.

The 1996 Telcom Act requires states to establish a discount on designated services provided to schools and libraries that is appropriate and necessary to ensure affordable access to and use of the services pursuant to §254(c)(3) of the FTA. The FTA also requires that the discount reflect the principle that the federal universal service support mechanisms be specific. FTA, §254(b)(5). The Joint Board has recommended that the FCC adopt a percentage discount mechanism, adjusted for schools and libraries that are defined as economically disadvantaged and those schools and libraries located in high cost areas. Specifically, the Joint Board recommended that the FCC adopt a matrix that provides discounts from 20% to 90%, to apply to all telecommunications services, internet access, and internal connections with the range of discounts correlated to the indicators of economic disadvantage and high cost for schools and libraries. JB Decision, ¶547.

In proposing its recommended discounts to the FCC, the Joint Board concluded that using a single measure of economic disadvantage and a model already familiar to most schools and libraries would be the least administratively burdensome approach to minimize recordkeeping or data gathering obligations to determine the degree to which a school or library is economically disadvantaged. Accordingly, the Joint Board recommended the national school lunch program because it believed this program satisfied these requirements. However, the Joint Board also remained open to other approaches that may prove to be minimally burdensome for schools and libraries, while providing an accurate measure of economic disadvantage.¹³ According to the Joint Board, employing the national school lunch program to determine eligibility for a greater discount appears to fulfill most accurately the statutory requirement to ensure affordable access to and use of telecommunications and other covered services for schools and libraries. JB Decision, ¶¶564 and 565.

The participants to this proceeding agree with the Joint Board's recommendation that the enrollment of each school in the national school lunch program is a reasonable proxy for schools' economic status. JCET April 4, 1997 letter; OCC Position Paper, p. 8; MCI Position Paper, p. 7. While concurring with the Joint Board's recommendation, OCC questions whether wealth indicators alone are sufficient to address the Connecticut Supreme Court's ruling in *Sheff*. As noted by the Joint Board, the national school lunch program determines a student's eligibility for free lunches or reduced prices based on family income levels. This program is a single program with a well-defined set of eligibility criteria, is in place nationwide and has data gathering requirements that are familiar to most schools. In light of the above, the Department concludes that the national school lunch program should provide a sufficient measure of economic disadvantaged children enrolled in Connecticut's schools. The Department concurs with the Joint Board that a model based on the national school lunch program should provide a sufficient measure of student wealth and will reflect the level of economic disadvantage in all of the schools and libraries eligible for universal support under §254 of the FTA, including public and nonpublic schools that do not participate in the lunch program.

It is for the above reasons that the Department believes that the national school lunch program is appropriate in light of the Connecticut Supreme Court's ruling in *Sheff v. O'Neill*. Application of the national school lunch program as a means of discounting schools and libraries' telecommunications costs will most likely result in those schools with high minority concentrations being eligible for greater discounts on telecommunications services than other schools. The Department believes that the national school lunch program enrollment will properly identify and address the economic need of these schools.

¹³ The Joint Board, while noting that non-public schools may not participate in the national school lunch program, recognized that the data regarding student eligibility for the program may not be readily available to such schools. Therefore, the Joint Board recommended that the FCC seek additional information and comments on what measures of economic disadvantage may be readily available for identification of economically disadvantaged non-public schools or, if not readily available, what information could be required that would be minimally burdensome. JB Decision, ¶¶564.

JCET states that the final Decision in this proceeding should consider alternative methods for determining level of cost and level of need for those institutions (schools or libraries) that do not participate in the national school lunch program. JCET April 4, 1997 letter. The Department finds that the Joint Board has already addressed this issue. Specifically, the Joint Board has recommended that schools or districts not participating in the national school lunch program need only certify the percentage of their students that would be eligible for the program if the school or district did participate. JB Decision, ¶568.

Similarly, since libraries do not participate in the national school lunch program, the Joint Board recommended that they also be eligible for greater discounts based on their location in a school district serving economically disadvantaged students. Specifically, the Joint Board recommended that the universal service fund administrator average the percentage of students eligible for the national school lunch program in all eligible schools, both public and nonpublic, within the school district in which a library is located. According to the Joint Board, the library would then be eligible to receive the level of discount representing the average discount offered to the school district in which it was located. The Joint Board determined that this was a reasonable method of calculation because libraries are likely to draw patrons from an entire school district and this method did not impose an unnecessary administrative burden on libraries. The Joint Board also recommended that the FCC request additional information and comments on what measures of economic disadvantage may be readily available for identification of economically disadvantaged libraries or, if not readily available, what information could be required that would be minimally burdensome. Id.

Relative to the three cost of service categories, the Joint Board did not specify how it would differentiate between the low, medium and high cost categories. While the Joint Board has recommended that the FCC consider the cost of providing services when setting discounts for schools and libraries, it also recommended the FCC seek additional information and comment on the cost of service issue before adopting rules. OCC and MCI have recommended the Department establish discounts on a school district basis. MCI also states that it does not believe that three cost of service categories is an appropriate level of disaggregation. AT&T claims that it requires a better understanding of how these cost categories would be applied in Connecticut before it could make a final determination. AT&T also states that when a decision is made at the federal level, that consideration be given to using similar metrics for purposes of consistency at the state level. OCC Position Paper, p. 13; MCI Position Paper, p. 9; AT&T Position Paper, pp. 8 and 9. Additional information and direction from the FCC is required concerning cost of service issues and where Connecticut places in low, medium, or high cost categories. This information is necessary before the Department can establish an intrastate discount for Connecticut's schools and libraries because without service cost specificity, insufficient or inappropriate funding may result. As noted above, the participants to this proceeding have questioned the relevance of "low, medium and high" costs and their application in Connecticut. Given the uncertainty surrounding this issue, the Department will defer judgment on this issue pending the FCC's clarification of the three cost of service categories. Based on the FCC's ruling, the Department will be in a better position to make a determination as to

whether the respective cost categories are sufficient in determining the appropriate level of discounts for Connecticut's schools.

In its May 8, 1997 Order in CC Docket No. 96-45, the FCC addressed the three cost of service categories described above. According to that Order, the FCC considered various methods in its deliberations including the use of cost data generated by the forward-looking cost methodologies that proponents filed for use in determining support for high cost areas; density pricing zones; availability of advanced services; tariffed T-1 prices for connections to an internet service provider; and whether schools and libraries are located in rural or urban areas. Based on its analysis, the FCC concluded that it would classify schools and libraries as high or low cost depending on whether they are located in a rural or an urban area, respectively. FCC May 8, Order, p. 266.

The FCC selected this classification system solution because it was least burdensome to schools, libraries and carriers. In support of its Decision, the FCC noted that identifying whether a school or library was located in a rural or urban area was a relatively easy method for schools and libraries to use, reasonably matched institutions facing the highest prices for telecommunications services with the highest discounts, and imposed no burden on carriers. The FCC also determined that, for purposes of the schools and libraries discount program, rural areas should be defined in accordance with the definition adopted by the Department of Health and Human Services' Office of Rural Health Policy (ORHP/HHS). The FCC claimed that ORHP/HHS uses the Office of Management and Budget's (OMB) Metropolitan Statistical Area designation of metropolitan and non-metropolitan counties, adjusted by most currently available Goldsmith Modification, which identifies rural areas within large metropolitan counties. FCC May 8, Order, p. 267.

According to the FCC, adoption of this definition of rural areas was consistent with the approach adopted in the health care section of its May 8, 1997 Order and represented a simple approach for schools and libraries to determine eligibility for an incremental high cost discount. The FCC also stated that OMB's list of metropolitan counties and the list of additional rural areas within those counties identified by the Goldsmith Modification are readily available to the public. Additionally, the FCC stated that eligible schools and libraries will need only to consult those lists to determine whether they are located in rural areas for purposes of the universal service program. FCC May 8, 1997 Order, pp. 267 and 268.

Because the FCC has adopted the use of the rural and urban categories to determine schools and libraries' eligibility for a high cost discount, the FCC determined that only two categories of schools and libraries was necessary. The FCC stated that because schools and libraries will be categorized as either rural (high cost) or urban (low cost), the "mid-cost" category recommended by the Joint Board was no longer relevant. The FCC found that a matrix of two columns was also simpler to use, and therefore, modified the discount matrix recommended by the Joint Board to two columns (i.e., urban and rural). FCC May 8, 1997 Order, pp. 268 and 269.

Accordingly, the Department finds that discounts for Connecticut schools and libraries should be based on the following matrix:

Percentage of students participating in national school lunch program	Low cost of service	High cost of service
< 1 (3%)	20%	25%
1-19	40%	50%
20-34	50%	60%
35-49	60%	70%
50-74	80%	80%
75-100	90%	90%

Participants were also questioned as to whether other parameters should be used to determine the discount. Based on the record in this proceeding, and pending the FCC's clarification of cost, the Department believes that the JB Recommended Decision appears to address and promote sufficiently the parameters necessary to meet Connecticut's universal service requirements. The 1996 Federal Act at §254(h) and the JB Recommended Decision have each established workable parameters under which discounts for schools and libraries may be provided without negatively affecting intrastate telecommunications competition. As noted above, a discount schedule based on the national school lunch program will provide for targeted assistance to Connecticut schools in direct proportion to their need. In the Department's opinion, no other parameters are necessary.

While AT&T generally accepts the Joint Board's recommended thresholds, MCI cautions that overburdening a carrier with universal funding responsibilities may thwart the objective of the universal service effort and other public service goals such as the development of effective competition. AT&T Position Paper, pp. 1-3; MCI Position Paper, p. 8. OCC also takes issue with the Joint Board's recommended thresholds and suggests two changes. Specifically, OCC recommends that a seventh stage be created by splitting the 1-19% stage into two (i.e., 1-9% and 10-19%). OCC also recommends, in light of *Sheff*, that the Department bump other school districts with high minority student concentrations into the highest discount rates. OCC Position Paper, pp. 9 and 10. Similarly, HCD recommends that the Department provide greater discounts to larger cities. HCD Comments, pp. 3-5.

Based on the OCC's analysis, more than double the number of Connecticut's school districts fall within the 1-19% national school lunch program (i.e., 71.4% of Connecticut schools compared to the 30.7% expected under the Joint Board's Decision). Additionally, only 1.4% of Connecticut school districts fall within the 75 - 100% range as compared to the 16.3% estimated by the Joint Board. These

percentages indicate Connecticut's high income and wealth status and why the addition of a seventh step as proposed by OCC is unnecessary. The Joint Board's recommendation, in basing the discount matrix on student participation in the national school lunch program, will efficiently direct telecommunications services' subsidies to those schools and libraries in direct proportion to their need. While the majority of Connecticut's schools would under the Joint Board's recommended schedule receive lower discounts when compared to other schools and libraries in the nation, the actual distribution of subsidy to state schools and libraries reflects Connecticut's high wealth and high income status. Therefore, most if not all of Connecticut's schools will receive some level of telecommunications subsidy. The Department also believes that the Joint Board's recommended discount matrix properly distributes the subsidies to those schools and libraries that require them the most, while ensuring that schools and libraries receive some level of subsidy to offset their telecommunications costs. Therefore, the Department does not find that sufficient justification exists at this time to detract from the Joint Board's recommended schedule.

Additionally, the Department does not favor OCC's proposal to "bump" other school districts with high minority student concentrations into the highest discount rates or the HCD suggested adjustment to the proposed discount matrix. As discussed above, the national school lunch program was the means selected by the Joint Board to determine the degree a school or library was economically disadvantaged. This program most accurately identifies the number of economically disadvantaged children in all of the schools and libraries where universal service support is necessary. In the Department's opinion, enrollment in this program will properly identify and address the telecommunications economic issues associated with minority concentrations throughout Connecticut ensuring that schools and libraries receive their fair share of subsidy. Therefore, the participants' recommendations to adjust the discount matrix are hereby denied.

The participants were also questioned as to whether a greater discount for economically disadvantaged schools is desirable for Connecticut and permissible under the FTA. While the participants agree that greater discounts for economically disadvantaged schools was permissible under the 1996 Telcom Act, for the same reasons discussed above, the Department finds that additional funding beyond the percentage amounts contained in the Joint Board's proposed discount matrix is unnecessary at this time.

Lastly, TCG recommends that those schools and libraries which have previously contracted with SNET, be required to reopen those contracts to bidding. TCG Comments, pp. 2 and 3; TCG Written Exceptions, pp. 2-4. The Department is currently reviewing SNET's practices relative to negotiated contracts and custom service arrangements in Docket No. 96-06-21, Petition of TCG Connecticut for an Advisory Ruling Concerning Custom Service Arrangements of the Southern New England Telephone Company. The Department is expected to issue a Decision in that docket in the near future, and based on the outcome of that proceeding, will act accordingly.

C. RESPONSIBILITIES OF SCHOOLS AND LIBRARIES

Schools and libraries that want to obtain a discount for intrastate telecommunications services should first determine their eligibility for the program under Section 254(h)(4) and 254(h)(5) of the 1996 Telcom Act. Pursuant to Section 254(h)(4), for-profit businesses and schools with an endowment exceeding \$50,000,000 are not entitled to preferential rate treatment. Elementary and secondary schools are defined under Section 254(h)(5) as those schools meeting paragraphs (14) and (25) of Section 14101 of the Elementary and Secondary Education Act of 1965.¹⁴ Libraries ineligible for participation in state-based plans for funds under Title III of the Library Services Construction Act are similarly ineligible for the schools and libraries discount. The discount is only applicable to telecommunications services used for educational purposes.

To receive a discount, eligible schools and libraries are required pursuant to Section 254(h)(1)(B) of the FTA to first submit a bona fide request to a telecommunications carrier.¹⁵ While the term "bona fide request" was not defined in the 1996 Telcom Act, the Joint Board in its Recommended Decision proposed, and this Department accepts, three conditions for use in determining the bona fide nature of any request for telecommunications services made by a school or library. First, a school or library must internally assess that it can provide the necessary supporting technologies to permit the telecommunications and other covered services ordered to be used effectively and adopt a plan for securing access to all of the necessary supporting technologies needed to use the services purchased under §254(h) of the FTA, effectively. Second, the school or library must submit in writing a description of the services it wants to purchase to the fund administrator or other entity designated by the FCC, who could then post a description of the services sought on a web site for all potential competing service providers to see and respond to as if the descriptions were RFPs. Third, the requesting school or library must submit to the service provider a written request for services. This request should be signed by the person authorized to order telecommunications and other covered services for the school or library, certifying the following under oath: (1) the school or library is an eligible entity under section 254(h)(4) of the FTA; (2) the services requested will be used solely for educational purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and, (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-purchasers and the portion of the services being purchased by the school or library.

¹⁴ Codified at 20 U.S.C. 335c, et seq.

¹⁵ With regard to the purchasing process, schools and libraries are encouraged to aggregate their demand with others to create a consortium with sufficient demand to attract a competitor into the market, which could influence the existing carrier to cut its prices. Benefits of aggregation can result in a more efficient shared use of facilities to which each school or library might need access, but which none alone would need full capacity.

Once a discount is established and a contract is entered into, the telecommunications provider will have the option of either applying the amount of the discount afforded to schools and libraries as an offset to its universal service contribution obligations or seeking that amount from universal service support mechanisms.

V. FINDINGS OF FACT

1. By its November 8, 1996 Recommended Decision in CC Docket No. 96-45, the Joint Board recommended that the FCC adopt a percentage discount mechanism to ensure affordable access by schools and libraries to telecommunications services.
2. The discount would apply to all telecommunications services, internet access, and internal connections, with the range of discounts correlated to the indicators of economic disadvantage and high cost for schools and libraries.
3. The Joint Board recommended that percentage discounts be available to a school based on the percentage of its students participating in the national school lunch program.
4. States are required to establish a discount on designated services provided to schools and libraries that is appropriate and necessary to ensure affordable access to and use of the services pursuant to §254(c)(3) of the FTA.
5. The Joint Board recommended that the FCC adopt a percentage discount mechanism, providing discounts from 20% to 90% on all telecommunications services including internet access, and internal connections adjusted for schools and libraries that are defined as economically disadvantaged and those schools and libraries located in high cost areas.
6. The national school lunch program determines a student's eligibility for free lunches or reduced prices based on family income levels.
7. This national school lunch program is a single program with a well-defined set of eligibility criteria, is in place nationwide, and has data gathering requirements that are familiar to most schools.
8. Schools and libraries will be classified as high or low cost depending on whether they are located in a rural or an urban area, respectively.

VI. CONCLUSION

The 1996 Telcom Act explicitly designates elementary and secondary schools and libraries among the entities eligible to receive the benefits of universal service support. The Joint Board's recommended discount mechanism is appropriate and

necessary to ensure affordable access to and use of appropriate telecommunications services by Connecticut schools and libraries. Intrastate discounts shall be, at a minimum, equal to those offered for interstate services. The percentage discount mechanism additionally provides the greatest flexibility to schools and libraries with respect to their telecommunications service purchasing needs. Additionally, employing the national school lunch program to determine eligibility for the range of discounts will provide a sufficient measure of economically disadvantaged children enrolled in Connecticut's schools, and is appropriate in light of the Connecticut Supreme Court's ruling in *Sheff v. O'Neill*.

Schools or districts that do not participate in the national school lunch program need only certify the percentage of their students that would be eligible for the program if the school or district did participate, and libraries would be eligible for greater discounts based on their location in a school district serving economically disadvantaged students.

Finally, the Joint Board's Recommended Decision appears to sufficiently address and promote the parameters necessary to meet Connecticut's universal service requirements while satisfactorily establish workable parameters under which discounts for schools and libraries may be provided without negatively affecting intrastate telecommunications competition. The Department concludes that no additional parameters is necessary to ensure affordable access to intrastate telecommunications services by schools and libraries in Connecticut is necessary. Pursuant to Section 254(h)(1)(B) of the FTA and the JB Recommended Decision, Connecticut schools and libraries may apply for telecommunications discounts.

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**DOCKET NO. 97-02-07 DPUC IMPLEMENTATION OF THE UNIVERSAL SERVICE
PROVISIONS OF THE FEDERAL
TELECOMMUNICATIONS ACT**

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

Janet Polinsky

Thomas M. Benedict

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.



Robert J. Murphy
Executive Secretary
Department of Public Utility Control

Date